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IN THE
COURT OF APPEALS OF INDIANA

WILLIAM LLOYD,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 52A02-0603-PC-204
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MIAMI CIRCUIT COURT
The Honorable Rosemary Higgins Burke, Judge
Cause No. 52C01-0412-PC-14

September 20, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

William Lloyd appeals the denial of his petition for post-conviction relief (PCR), by which he challenged his conviction for battery causing serious bodily injury, a class C felony. Lloyd presents the following restated issues for review:

1. Did Lloyd receive ineffective assistance of counsel?

2. Was there a sufficient factual basis to support Lloyd's guilty plea?

3. Was Lloyd's guilty plea entered knowingly and voluntarily?

We affirm.

The facts favorable to the guilty plea are that on May 28, 1998, Lloyd returned home, where he lived with his sixty-eight-year-old mother, Mildred. Lloyd became angry and began to beat Mildred with a cane. During the twenty- to thirty-minute beating, Lloyd inflicted severe bruises on Mildred's arms, shoulder, right hand, left thigh, and under her right eye. While doing so, he threatened to skin Mildred alive, to beat her to death, to hang her by the hands until she died, and several other times simply to kill her. Finally, he ordered her to leave $10,000 on the kitchen table for him within twenty-four hours so he could leave the country. He told her he would kill her if she did not leave the money. After Lloyd left, Mildred called police and reported what had occurred. Officers came to Mildred's house to investigate. They interviewed Mildred and took photographs of her injuries.

The next day, May 29, Lloyd was charged with battery resulting in serious bodily injury. On October 5, 1998, Lloyd pled guilty. At a hearing in which he changed his plea from not guilty to guilty, Lloyd admitting that he knowingly beat Mildred with a

cane, causing her to suffer serious pain. The court accepted the plea and pronounced sentence consistent with the terms upon which the parties agreed, i.e., eight years incarceration, with seven suspended to probation, and credit for time served. Further facts will be provided where relevant.

1.

Lloyd contends he received ineffective assistance of counsel. Specifically, he contends counsel was ineffective in advising him to plead guilty when the evidence relative to the seriousness of the injuries suffered by Mildred was not sufficient to support that charge.

In order to prevail on his claim of ineffective assistance of counsel, Lloyd must demonstrate both that his counsel's performance was deficient and that he was prejudiced thereby. *French v. State*, 778 N.E.2d 816 (Ind. 2002). Counsel's performance is deficient if it falls below an objective standard of reasonableness based on prevailing professional norms. *Id*. To establish the requisite prejudice, Llody must show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id*. Failure to satisfy either element (i.e., deficient performance or prejudice) will cause the claim to fail. *Id*. If it is easier to dispose of an ineffective assistance claim for lack of sufficient prejudice, we may follow that course. *DeWhitt v. State*, 829 N.E.2d 1055 (Ind. Ct. App. 2005).

Lloyd essentially contends that his counsel rendered ineffective assistance in advising him to plead guilty. According to Lloyd,

> [t]he possibility of going to a jury trial was never a consideration and therefore defenses were never discussed. No meaningful defense could be discussed without [Lloyd] seeing all of the discovery, namely the pictures. [Defense counsel] never took a statement from the victim to see what she might say if the case went to trial, and thus a defense was overlooked.

Appellant's Brief at 6. The significance of the above statement, according to Lloyd, centers upon the State's ability to prove that Mildred suffered "serious bodily injury", Ind. Code Ann. § 35-42-2-1 (West, PREMISE through 2006 Public Laws approved and effective through March 15, 2006), an element of the offense to which Lloyd pled guilty. "Serious bodily injury" is statutorily defined as "bodily injury that creates a substantial risk of death or that causes: … (3) extreme pain." Ind. Code Ann. § 35-41-1-25 (West, PREMISE through 2006 Public Laws approved and effective through March 15, 2006). Lloyd contends the State's case on that element hinged entirely upon Mildred's testimony that she suffered extreme pain. Lloyd strongly implies Mildred's testimony would not have accomplish that, viz., "[g]iven the victim's testimony at the post-conviction relief hearing, there is a reasonable probability that [Lloyd] would not have been convicted at trial."

We note first it is far from certain Mildred's testimony on that subject would have been the same at the time of the sentencing hearing as it evidently was approximately seven years later at the hearing on Lloyd's PCR petition. Mildred is Lloyd's mother, and her testimony at the latter proceeding to the effect that she did not suffer extreme pain must be considered in that light. In fact, her testimony at the PCR hearing about the incident itself varies widely from the account she gave police on the day of the incident.

At the hearing, she claimed Lloyd was "hitting at an animal" with the cane and "inadvertently" struck her, although she acknowledged that she was thereby struck "more than once". *Transcript* at 15. The PCR court was not obliged to accept Mildred's greatly modified version of the incident, coming as it did seven years after the incident, and considering it was from the defendant's mother, who had obviously reconciled her relationship with Lloyd by that time. Thus, we cannot presume Mildred would have testified that she did not suffer extreme pain had she been called upon to testify on that subject at the time a trial would have been conducted. Even if she had, the factfinder would not have been bound to believe her.

Photographs taken by investigating officers shortly after the incident depict serious and extensive bruising on Mildred that would have belied any such claim. In short, the evidence supporting this element of the offense was relatively strong. Thus, even assuming counsel had not advised Lloyd to accept the plea agreement, and the matter had proceeded to trial, we do not discern any prejudice to Lloyd, i.e., "a reasonable probability (i.e. a probability sufficient to undermine confidence in the outcome) that, but for counsel's errors, the result of the proceeding would have been different." *McCary v. State*, 761 N.E.2d 389, 392 (Ind. 2002). Lloyd's has failed to establish by a preponderance of the evidence that he received ineffective assistance of counsel in this respect.

2.

Lloyd contends the there was not an adequate factual basis to support his guilty plea. We recently set forth our standard of review with respect to such a claim, as follows:

> Ind.Code § 35-35-1-3(b) provides in relevant part that "the court shall not enter judgment upon a plea of guilty unless it is satisfied from its examination of the defendant or the evidence presented that there is a factual basis for the plea." The factual basis requirement primarily ensures that when a plea is accepted there is sufficient evidence that a court can conclude that the defendant could have been convicted had he stood trial. A finding of factual basis is a subjective determination that permits a court wide discretion which is essential due to the varying degrees and kinds of inquiries required by different circumstances. A factual basis exists when there is evidence about the elements of the crime from which a court could reasonably conclude that the defendant is guilty. Trial court determinations of adequate factual basis, like other parts of the plea process, arrive here on appeal with a presumption of correctness. We typically review claims of error about pleas under an abuse of discretion standard. This standard is also appropriate where, as here, the Petitioner asks that his plea be set aside through a motion for post-conviction relief on grounds that the factual basis was inadequate.

Oliver v. State, 843 N.E.2d 581, 588 (Ind. Ct. App. 2006) (internal citations omitted). There are several ways in which the State may establish an adequate factual basis for the acceptance of a guilty plea, including: (1) the presentation of evidence on the elements of the charged offenses; (2) the defendant's sworn testimony concerning the events underlying the charges; (3) the defendant's admission of the truth of the allegations in the information read in court; or (4) the defendant's acknowledgment that he understands the nature of the offenses charged and that his plea is an admission of the charges. *Id*.

At the plea hearing in the instant case, Lloyd admitted he struck his mother with a cane more than once, and that those blows inflicted injuries upon her. When he was shown photos of her injuries, he acknowledged they would have resulted in severe pain had they been inflicted upon him. Lloyd contends the foregoing is insufficient to establish a factual basis in two respects. First, he contends he acknowledged that the injuries would cause "serious" pain, *Appellant's Appendix* at 108, but did not acknowledge "extreme" pain, which is the term used in the statute defining the offense. *See* I.C. § 35-41-1-25. This strikes us a quibbling over semantics. In this context, there is no meaningful difference between extreme pain and serious pain. The latter is synonymous with the former in this context and sufficient to establish the requisite element in I.C. § 35-41-1-25.

Second, he contends he acknowledged only that *he* would have experienced serious pain if he had sustained those injuries, not that *his mother* – the victim – did in fact suffer such pain. When initially asked about his mother's injuries, Lloyd answered somewhat evasively, saying he had not spoken to his mother in the four months since the incident and thus did not know if she had been injured. He then acknowledged that she had, in fact, suffered injury. When told that his mother reported to police officers on the scene that she was in "severe pain," and asked if that was true, he responded that he agreed that she was, if that is what she said. Perhaps aware of the somewhat equivocal nature of that response, the prosecuting attorney showed Lloyd photographs of Mildred's injuries and asked if Lloyd would have suffered serious pain had those injuries been his.

He responded that he would. In the context of the question and the questioning from which it arose, Lloyd's agreement that Mildred's injuries would have caused him serious pain was tantamount to an admission that Mildred suffered serious pain as a result of her injuries. The factual basis was sufficient to support the guilty plea.

3.

Lloyd contends his guilty plea was not knowing and voluntarily, and thus was not valid. In support of this contention, Lloyd cites, in part, Issues 1 and 2 above. Having resolved those issues against him, we proceed to the remainder of his argument on this point, which is:

> He asked out loud in open court at the plea hearing whether he had to admit to the allegation in the charge and he lacked meaningful communication from his attorney regarding pertinent information about his case. He stated at the plea hearing that he had not seen important pictures related to his case and he and his counsel had to step away from the table to discuss the plea. One would be hard pressed to find a case that had more open, outward evidence that this plea was not voluntary and intelligently/knowingly entered into.

Appellant's Brief at 8. We will not undertake to explain, point-by-point, why the foregoing occurrences do not vitiate the knowing and voluntary nature of Lloyd's guilty plea. It suffices to say that nothing he described and nothing we find in the record of the guilty plea hearing causes us to question whether Lloyd knowingly and voluntarily entered into the plea agreement.

Lloyd was properly advised of the constitutional rights he was waiving and he acknowledged those rights. He stated that his agreement was not coerced, that no

inducing promises were made other than those contained in the agreement, and that he was not under the influence of substances that would impede his mental functioning. In short, there is no indication that his will was overcome by external circumstances or incapacitating substances. The plea was voluntary. The terms were carefully explained to him at the hearing and he acknowledged and acquiesced to those terms. Finally, he stated that his attorney had represented him fairly, and that it was in his best interest to plead guilty. The plea was knowing.

Having found no basis to set aside the guilty plea, we affirm the denial of Lloyd's petition for post-conviction relief.

Judgment affirmed.

BARNES, J., and MATHIAS, J., concur.